

Message Text

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INFO OCT-01 NEA-10 ISO-00 SCS-03 SCA-01 DHA-02 H-01 SS-15
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DRAFTED BY L/M:HFSHAMWELL:MFM

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R 092257Z DEC 76

FM SECSTATE WASHDC

TO AMEMBASSY NEW DELHI

C O N F I D E N T I A L STATE 299763

E.O. 11652: N/A

TAGS: CGEN, IN

SUBJECT: CONSULAR CONVENTION NEGOTIATIONS

REF: (A) NEW DELHI 16152 (B) STATE 262317
(C) STATE 152720

1. AS AGREED DURING MEETING HELD IN DEPT. ON NOV. 17
WITH EMB,OLCONS, DEPT. HAS PREPARED AND POUCHED COPIES
OF PROPOSED DRAFT CONSULAR CONVENTION BETWEEN THE UNITED
STATES AND INDIA. THIS CONVENTION FOLLOWS LINES OF MOST
RECENTLY CONCLUDED BILATERAL CONVENTIONS (THOSE WITH
BULGARIA AND CZECHOSLOVAKIA) AND THAT TAKEN IN CURRENT
NEGOTIATIONS WITH GDR. IT IS DESIGNED TO MEET NEEDS OF
U.S. CONSULAR OPERATIONS AS SEEN FROM DEPT'S VIEWPOINT.
CONSEQUENTLY, IT IS NOT GEARED TOWARD ANY PARTICULAR SENSI-
TIVITIES OF GOI, ALTHOUGH DEPT. ANTICIPATES MEETING SUCH
ISSUES DURING COURSE OF NEGOTIATIONS.

2. MOST IMPORTANT PROVISIONS OF DRAFT RELATE TO CONTACT
BETWEEN CONSULAR OFFICERS AND NATIONALS OF THE SENDING
STATE (WHEN SUCH NATIONALS ARE UNDER ANY FORM OF LIMITA
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TION OF PERSONAL FREEDOM) AND IMMUNITIES FOR CONSULAR

OFFICERS.

3. DEPT. WILL NOT ATTEMPT TO GIVE EMBASSY DETAILED ANALYSIS OF ALL PROVISIONS OF THE CONVENTION, MANY OF WHICH SPEAK FOR THEMSELVES AND/OR ARE CLOSELY RELATED TO CORRESPONDING PROVISIONS IN THE VIENNA CONVENTION ON CONSULAR RELATIONS. RATHER, DEPT. WOULD REQUEST EMBASSY TO REVIEW DRAFT AND FORWARD ANY QUESTIONS OR SUGGESTIONS WHICH IT MAY HAVE.

4. THE PROVISIONS RELATING TO CONTACT BETWEEN CONSULAR OFFICERS AND SENDING STATE NATIONALS HIGHLIGHT THE DIFFICULTIES EXPERIENCED IN INDIA AND ELSEWHERE IN GETTING COOPERATION OF THE RECEIVING STATE IN NOTIFYING A CONSULAR POST ON A TIMELY BASIS OF THE ARREST, DETENTION OR OTHER LIMITATION OF PERSONAL FREEDOM OF A NATIONAL OF THE SENDING STATE SO THAT THE CONSULAR OFFICER MAY PROVIDE NECESSARY ASSISTANCE TO THE NATIONAL. ARTICLE 39 OF THE DRAFT CONVENTION SETS SPECIFIC TIME LIMITS FOR NOTIFICATION OF A LIMITATION OF PERSONAL FREEDOM (MAXIMUM OF THREE CALENDAR DAYS) AND PERMISSION FOR A CONSULAR OFFICER TO VISIT HIS NATIONAL (FOUR CALENDAR DAYS). THESE TIME LIMITS ARE NOT INTENDED TO BE INFLEXIBLE. THE DRAFT CONVENTION PROVIDES THAT THE NOTIFICATION OF DETENTION SHALL BE MADE IMMEDIATELY" AND ACCESS GRANTED "AS SOON AS POSSIBLE". THUS, THE RECEIVING STATE AUTHORITIES MUST PROVIDE THESE NOTIFICATIONS BEFORE EXPIRATION OF THE MAXIMUM TIME PERIOD WHENEVER POSSIBLE. IT IS FURTHER NOTED THAT THE FOUR DAY PERIOD IN WHICH VISITATION MUST BE PERMITTED RUNS CONCURRENTLY WITH THE THREE DAY PERIOD AND DOES NOT BEGIN TO RUN AFTER THE EXPIRATION OF THE THREE DAYS.

5. THE PROVISIONS IN ARTICLE 39 RELATING TO TREATMENT OF DUAL NATIONALS IS ONE WHICH IS GEARED MORE CLOSELY TO THE SITUATION PREVAILING IN AREAS OF EASTERN EUROPE IN WHICH, BECAUSE OF THE OPPRESSIVE NATURE OF THE REGIME OR BECAUSE OF THE NATURE OF THE NATIONALITY LAWS OBTAINING, PERSONS OF U.S. NATIONALITY WHO RETURN TO THEIR COUNTRY OF ORIGIN (OR ANCESTRY) FIND THAT THEY ARE TREATED AS RECEIVING

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STATE NATIONALS IN THE EVENT OF ANY DIFFICULTY WITH THE LAW. THE DEPARTMENT IS NOT AWARE OF ANY SPECIFIC DIFFICULTY IN INDIA IN THIS REGARD BUT BELIEVES THAT SUCH A PROVISION IS DESIRABLE IF THE GOI WILL ACCEPT IT.

6. THE IMMUNITY PROVISIONS OF THE DRAFT CONVENTION FOLLOW VERY CLOSELY THOSE FOUND IN THE VIENNA CONVENTION ON DIPLOMATIC RELATIONS. THEY EXTEND CONSIDERABLY MORE

IMMUNITY TO CONSULAR PERSONNEL THAN DOES THE VIENNA CONVENTION ON CONSULAR RELATIONS. FURTHER, IMMUNITIES ARE EXTENDED TO MEMBERS OF THE FAMILIES OF CONSULAR OFFICERS

AND CONSULAR EMPLOYEES. SINCE IMMUNITIES APPEAR TO BE A MATTER OF PRIME CONCERN WITH INDIAN DIPLOMATIC AND CONSULAR MISSIONS HERE, IT IS DOUBTFUL WHETHER THE GOI WILL HAVE ANY PARTICULAR DIFFICULTIES WITH THESE PROVISIONS.

7. EMBASSY IS REQUESTED TO TRANSMIT DRAFT CONVENTION TO GOI THROUGH APPROPRIATE DIPLOMATIC CHANNELS. CONTENTS OF THIS MESSAGE MAY BE USED, AS NECESSARY, FOR ANY TALKING POINTS WHICH APPEAR WARRANTED. IF EMBASSY HAS ANY ADDITIONAL QUESTIONS, DEPT. WILL BE PLEASED TO SUPPLY MORE INFORMATION.

8. EMBASSY IS FURTHER REQUESTED TO SEEK FROM GOI CONSTRUCTIVE RESPONSE RESPECTING COMMENCEMENT OF ACTUAL NEGOTIATIONS. IN VIEW OF THE LONG PERIOD OF TIME WHICH HAS ALREADY ELAPSED IN GETTING TO THIS STAGE, IT SEEMS HIGHLY DESIRABLE TO GET SOME ACTION MOVING AS QUICKLY AS POSSIBLE. GAO CONTINUES TO HAWK DEPARTMENT ON PROGRESS IT IS MAKING ON THIS FRONT. INDICATIONS ON THIS END MAY SUGGEST GOI IN FACT INTERESTED IN PURSUING MEANINGFUL NEGOTIATIONS.

9. AS SOON AS EMBASSY HAS ADVISED DEPARTMENT ON GOI RESPONSE TO PROPOSAL TO NEGOTIATE, MORE SPECIFIC GUIDANCE CONCERNING MODE OF CONDUCTING NEGOTIATIONS WILL BE TRANSMITTED. ROBINSON

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: CONSULAR AGREEMENTS, NEGOTIATIONS
Control Number: n/a
Copy: SINGLE
Draft Date: 09 DEC 1976
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: ShawDG
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1976STATE299763
Document Source: CORE
Document Unique ID: 00
Drafter: HFSHAMWELL:MFM
Enclosure: DG ALTERED
Executive Order: GS
Errors: N/A
Film Number: D760456-0148
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1976/newtext/t19761257/aaaabwww.tel
Line Count: 145
Locator: TEXT ON-LINE, ON MICROFILM
Office: ORIGIN L
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: 76 NEW DELHI 16152, 76 STATE 262317, 76 STATE 152720
Review Action: RELEASED, APPROVED
Review Authority: ShawDG
Review Comment: n/a
Review Content Flags:
Review Date: 31 MAR 2004
Review Event:
Review Exemptions: n/a
Review History: RELEASED <31 MAR 2004 by hartledg>; APPROVED <13 AUG 2004 by ShawDG>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
04 MAY 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: CONSULAR CONVENTION NEGOTIATIONS
TAGS: CGEN, IN, US
To: NEW DELHI
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006